



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1993

Mr. Allan Rutter
Deputy Executive Director
Texas High Speed Rail Authority
823 Congress Ave., Suite 1502
Austin, Texas 78701

OR93-095

Dear Mr. Rutter:

You ask whether certain financial information in two franchise applications submitted to the High Speed Rail Authority (the authority) is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16868.

You seek to withhold the requested information based on section 3(a)(1) of the Open Records Act which excepts from required public disclosure information deemed confidential by law, either Constitutional, statutory, or by judicial decision. Section 13 (b) of article 6674v.2, V.T.C.S., provides

The board [of directors of the authority] may contract with a nongovernmental person or corporation to maintain and keep confidential a trade secret, commercial information, or financial information that is obtained from the person or corporation in connection with the exercise of any authority granted under this Act.

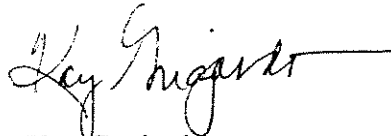
Pursuant to this provision, the authority,¹ through its executive director, has executed an agreement with the two franchise applicants, which prohibits public disclosure of certain financial information. Generally, the Open Records Act does not permit a governmental body to withhold information based on an agreement to keep such information confidential. Open Records Decision No. 283 (1981) However, when a governmental

¹While section 13(b) authorizes the *board of directors* of the authority to enter into confidentiality agreements, we find that the executive director of the authority is authorized to contract on behalf of the board of directors. See V.T.C.S. art. 6674v.2, § 17(a)(2)(authorizing the board to adopt rules necessary to govern the operation of the authority); 43 T.A.C. § 81.100(1)(authorizing the board to hire an executive director and authorizing the executive director to administer board policies and directives).

body is specifically authorized by statute to enter into such agreements, it may withhold information that is the subject of that agreement based on section 3(a)(1) of the Open Records Act. Open Records Decision No. 414 (1984). Accordingly, pursuant to section 3(a)(1) of the Open Records Act, in conjunction with section 13(b) of article 6674v.2, V.T.C.S., you must withhold the requested financial information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-095.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo", with a horizontal line extending from the end of the signature.

Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref: ID# 16868

cc: Ms. Gail Randle
Rt. 7 Box 230
Seguin, Texas 78155